H.L. BANNERJI v. CHIN CHENG REALTY (PTE.) LTD.

[C.A. (Wee Chong Jin C.J., Sinnathuray & Rajah JJ.) April 15, 1983]
[Singapore – Civil Appeal No. 52 of 1982]

Landlord & Tenant – Lease for 10 years – Lease providing for renewal and rent increase – Tenant sought for renewal of lease – Application for specific performance disallowed by High Court – Appeal – Limitation Act (Cap. 10), s. 6(1)(a) – Planning Act (Cap. 279), ss. 2 & 9.

Interpretation – Meaning of "assessment" distinguished from "annual value"

By a lease dated July 30, 1953 (1953 lease) made between the defendants and the plaintiff, the defendants demised to the plaintiff premises at No. 322-F Changi Road for 4 years from August 1, 1953 at a monthly rent of $110. Before the said lease expired, a new lease for a term of 10 years was executed on July 23, 1957 (1957 lease) by the respondents and the appellant on the identical terms and conditions as those contained in the 1953 lease except for the additional proviso to Clause thereof which read that the said rent was subject to increase or decrease "if the assessment on the said premises shall ... be increased or decreased". The said lease also provided for renewal for a further term of 10 years on the tenant's request to be made 3 calendar months before the expiration of the term subject to the condition that there was no breach or non-observance of any covenants.

By a letter dated January 3, 1967 the plaintiff requested the defendants to grant him a further term of 10 years from the expiration of the 1957 lease, namely on July 31, 1968 on the same terms. The defendants refused. The plaintiff, however, had remained in possession of the said premises.

By a letter dated March 15, 1974, the defendants informed the plaintiff that the Comptroller of Property Tax had increased the annual value of the said premises from $1,320 to $2,880 with effect from March 11, 1974, and that the rent would be increased from $110 per month to $240 per month with effect from March 11, 1974 in accordance with the terms of the lease.

On April 22, 1977, the plaintiff wrote another letter to the defendant requesting the defendant to grant the plaintiff a further term of 10 years from July 31, 1977. The defendants refused.

On July 27, 1977 the plaintiff commenced Suit No. 2187 of 1977 against the respondents claiming specific performance of the 1957 lease and to have leases granted to him for a term of 10 years from August 1, 1967 to July 31, 1977 and for yet another 10 years from August 1, 1977 to July 31, 1987.

On September 29, 1977 the defendants commenced action against the plaintiff for possession of the premises and arrears of rent at $240 per month from March 11, 1974 and mesne profits from September, 1977.

The High Court dismissed the plaintiff's claim (see [1983] 1 M.L.J. 18) and the plaintiff appealed. The defendants claimed that the plaintiff's cause of action was barred under s.6(1)(a) of the Limitation Act (Cap. 10).

Held, allowing the appeal: (1) "annual value" and "assessment" do not mean one and the same thing and cannot be used interchangeably. Had these matters been brought to the attention of the learned trial judge he would not have come to the conclusion that "the rental should be increased based on the annual value" but would have come to the conclusion that the rental should be increased based on the increased property tax to be paid by the defendants/respondents.

(2) the plaintiff/appellant was never even in breach of the 1957 Lease. The respondents' claim for possession of the demised premises and arrears of rent and mesne profits must fail and be dismissed with costs;

(3) the respondents could not avail themselves of the provisions of section 6(1)(a) of the Limitation Act to resist the claims of the appellant for specific performance for the reason that the appellant always had an equitable right to a renewal of the lease and equity looks upon as done what ought to have been done.

Case referred to:

(1) *Walsh* v. *Lonsdale* (1882) 21 Ch.D. 9

COURT OF APPEAL.

L.A.J. Smith for the appellant.
Giam Chin Toon for the respondents.

Cur. Adv. Vult.

Rajah J. (delivering the Judgment of the Court): By a Deed dated the July 30, 1953 (the 1953 Lease) Chin Cheng Realty (Pte) Ltd. (the Respondents), the owners of premises known as 322-F Changi Road demised to one Hirendra Lal Bannerji (the Appellant), a medical practitioner, the said premises for a term of four years from the 1st day of August 1953 paying therefor monthly in advance during the said term the rent of $110.00, (Clause 1). Under the 1953 Lease the Respondents, *inter alia*, covenanted with the Appellant:–

(1) "To pay all rates taxes *assessment* (emphasis ours) and outgoings payable in law in respect of the demised premises other than all City Council charges for electricity, gas and water supplied to the demised premises." (Clause 3(b)). Assessment was levied under section 59 of the Municipal Ordinance (Cap. 133 of the 1936 Revised Edition of the Laws).

(2) "That on the written request of the Tenant (Appellant) made three months before the expiration of the said term hereby created and if there shall not at the time of such request be

any existing breach or non-observance of any of the covenants on the part of the Tenant (Appellant) hereinbefore contained at the expense of the Tenant (Appellant) grant to him a lease of the demised premises for a further term of four years from the expiration of the said term at the same rent and containing the like covenants and provisoes as herein contained including the present covenant for renewal" (Clause 3(c)).

Under the 1953 Lease the Appellant was "to pay all City Council charges for electricity, gas and water supplied to the demised premises" (Clause 2(c)) and to "have the right to assign his estate in the demised premises or to sublet the demised premises or any part thereof" (Clause 4(a)). There was incorporated in the 1953 Lease a forfeiture clause in the following terms:–

"(b) If the rents hereby reserved or any part thereof shall be unpaid for twenty one days after demand in writing or if any covenant on the Tenant's (Appellant's) part herein shall not be performed or observed of if the Tenant (Appellant) or other person in whom for the time being the term hereby created shall be vested shall become bankrupt or enter into any composition with his creditors then and in any of the said cases it shall be lawful for the Landlords (Respondents) at any time to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the right of action of the Landlords (Respondents) in respect of any breach of the Tenant's (Appellant's) covenants herein contained." (Clause 4(b)).

As appears from an endorsement thereon, the 1953 Lease was registered in the Registry of Deeds on the August 4, 1953 "in the exercise of the discretion conferred by rule dated April 16, 1934 under Rule 13 of the Registration of Deeds Rules" 1934. The said Rule 13 framed under the Registration of Deeds Ordinance (Cap. 255 of the 1955 Edition of the Laws) enabled the Registrar of Deeds to dispense with compliance with certain provisions relating to conditions precedent to registration of deeds (section 14).

At the time of the registration of the 1953 Lease there was in force in Singapore the Singapore Improvement Ordinance (Cap. 134 of the 1936 Revised Edition of the Laws) to provide for the improvement of the Town and Island of Singapore. Under Section 58(1) of the said Ordinance it was provided that "No person shall, without the written permission of the Board (The Singapore Improvement Trust) erect any building or *lay-out* (emphasis ours) any land or use any land or building in any manner which is not in conformity with the General Improvement plan" Under Section 59(11),

"Any person who ... lays out any land in lots for building purposes otherwise than in accordance with a plan approved by the Board under this section ... shall be liable to a fine not exceeding two hundred and fifty dollars ..." Section 3, the definition section of the said Ordinance , enacts, *inter alia*, that

"'Lay-out', as applied to any area, means the utilisation or proposed utilisation of such area or any part thereof for any of the purposes for which a plan or scheme prepared under section 52 or section 69 may provide. A person is said to "lay out" land if by any deed or instrument he conveys, assigns, demises or otherwise disposes of any part of such land in such manner that the part so disposed of becomes a separate holding; provided that a lease for a period not exceeding three years without the option of renewal or purchase shall not be deemed to be a disposal within the meaning of this interpretation; and provided further that a conveyance, assignment, demise or other disposition of a portion of any area shall not be deemed to be a "lay-out" if the boundaries of such portion correspond with the ground plan of any existing building of a permanent nature erected thereon together with such area of land occupied therewith as the Board may having regard to the circumstances of each particular case allow."

"'Holding' means any piece or parcel of land held or possessed under an instrument of title, capable of being registered under the Registration of Deeds Ordinance (Chapter 121) relating exclusively thereto, and 'orginal holding' and 'final holding' mean respectively, with reference to a scheme which provides for the redistribution of holdings, a holding prior to its amalgamation with other holdings for the purpose of redistribution and a holding allotted in pursuance of redistribution."

Before the 1953 Lease expired a new Lease for a term of ten years commencing on the 1st August 1957 was executed on July 23, 1957 (the 1957 Lease) by the Respondents and the Appellant on the identical terms and conditions as those contained in the 1953 Lease except for the additional proviso to Clause 1 thereof which reads as follows:

"Provided however that if the *assessment* (emphasis ours) on the said premises shall at any time within the said period be increased or decreased then and in such event the said rent shall also be proportionately increased or decreased accordingly."

The 1957 Lease was similarly registered in the Registry of Deeds on the August 1, 1957.

A little more than two years after the execu-

tion of the 1957 Lease, the Planning Ordinance 1959 (12 of 1959) (Planning Ordinance) was passed to provide for the planning and improvement of Singapore and came into effect on the February 1, 1960. The Planning Ordinance transferred the functions of the Board to the Competent Authority appointed under it and repealed Parts IV, V and VI of the said Singapore Improvement Ordinance. Under Section 9(3)(a) of the Planning Ordinance "no person shall *subdivide* (emphasis ours) any land unless – (a) he has obtained the written permission of the Competent Authority..." Under Section 9(4) "All applications for permission to develop or subdivide land shall be made to the Competent Authority in the form and manner prescribed by rules made under Section 17 of this Ordinance." Under Section 9(8) "Any person who contravenes the provisions of sub-section (3) of this section, shall be guilty of an offence against this Ordinance and shall on conviction be liable to a fine ..."

Section 2, the definition section of the Planing Ordinance, *inter alia*, enacts:

'land' includes buildings and any estate or interest in or right over land;"

" 'Subdivide' – A person is said to subdivide land if, by any deed or instrument, he conveys, assigns, demises or otherwise disposes of any part of the land in such a manner that the part so disposed of becomes capable of being registered under the Registration of Deeds Ordinance or in the case of registered land being included in a separate folium of the land-register under the Land Titles Ordinance and "subdivision" shall be construed accordingly: Provided that a lease for a period not exceeding seven years without the option of renewal or purchase shall not be deemed to be a disposal within the meaning of this definition;"

" 'Holding' means any piece of parcel of land held or possessed under an instrument of title capable of being registered under the Registration of Deeds Ordinance or where applicable under the Land Titles Ordinance, 1956, relating exclusively thereto;"

On the January 3, 1967, the Appellant, who was in occupation of the demised premises and not in any existing breach or non-observance of any of his covenants under the 1957 Lease, made a written request as provided for therein for the grant to him of a lease for a term of 10 years from the August 1, 1967. As there was no response a further written request was made on the April 20, 1967. However, the Respondents took no action to execute such a lease.

On the March 15, 1974 the Respondents wrote to the Appellant to the effect that the Comptroller of Property Tax acting under Section 18(2) of the Property Tax Act (Chapter 144 of the Revised Edition 1970) had increased the annual value of the demised premises from $1,320.00 to $2,880.00 with effect from March 11, 1974 and that the annual value thereof was based on a monthly rent of $240.00. The Respondents cited the said proviso to Clause 1 of the 1957 Lease and claimed from the Appellant an increased rental of $240.00 per mensum as from March 11, 1974.

In this connection it should be observed that the demand for an increased rent by the Respondents was as a result of the Comptroller of Property Tax increasing the property tax on the demised premises. The Property Tax Ordinance 1960 came on to our Statute Book in January 61 and by virtue of Sections 6 and 7 thereof a tax known as property tax became payable as from the January 1, 1961 in respect of each year at the rate of thirty-six per centum upon the annual value of every property included in the valuation List (previously known under the Municipal Ordinance as Assessment List). Section 64 of the said Ordinance repealed Sections 59 to 81A (rating provisions) of the Municipal Ordinance and Sections 108 to 130 (rating provisions) of the Local Government Ordinance 1957.

The Appellant however contended that under the 1957 Lease he was only liable to pay them the increase in the assessment payable by the Respondents and accepted liability for $46.80 per month and said that under the said proviso to Clause 1 of the 1957 Lease the new rental per month should be $110.00 plus $46.80 (being 1/12th of the increased property tax) = $156.80.

On the April 22, 1977 the Appellant made yet another written request under the 1957 Lease this time for a renewal thereof for yet another period of ten years from the August 1, 1977. On the July 13, 1977 the Appellant wrote to the Respondents that he was prepared to pay the increased rental of $240.00 per mensum under protest but subject to recovery in case of his construction of the

said proviso being judicially determined as correct and on this basis sent them a cheque for $9,360.00, the arrears alleged to be due up till then. The Respondents returned the cheque for $9,360.00 to the Appellant or the July 22, 1977.

On the July 27, 1977 the Appellant commenced Suit No. 2187 of 1977 against the Respondents claiming specific performance of the 1957 Lease and to have leases granted to him accordingly for a term of 10 years from the August 1, 1967 to the July 31, 1977 and for yet another term of ten years from the August 1, 1977 to the July 31, 1987 in respect of the demised premises. In their Further Amended Defence the Respondents contended that (i) the effect of the said Clause 3(c) of the 1957 Lease is not that of a perpetually renewable lease and (ii) it was never their intention to grant the Appellant a perpetually renewable lease and pleaded:–

(1) That the appellant, despite repeated requests, had not paid and/or tendered the proper rental payments, namely the increased rent of $240.00 per month, in accordance with the 1957 Lease since March 1974 and in consequence thereof was in breach thereof and therefore not entitled to its renewal.

(2) That, if the Appellant were entitled to a renewal of the 1957 Lease for a term of ten years on the August 1, 1977, which was denied, he was only entitled to such renewal without the proviso for any further renewal inasmuch as the true and correct interpretation of Clause 3(c) of the 1957 Lease is that the Respondents were only bound to include a renewal clause in the renewal lease after the expiry of the first ten years of the 1957 Lease and not in any renewal lease thereafter.

(3) That the Appellant's right of action, if any, accrued from the August 1, 1967 when the Respondents allegedly failed to grant the Appellant the further first term of ten years and that, as more than six years had elapsed before action herein was commenced, the Appellant's alleged cause of action herein was barred by section 6(1)(a) of the Limitation Act (Chapter 10).

(4) That Clause 3(c) of the 1957 Lease is a "subdivision" within the meaning of s.2(1), s.9(3) and s.9(8) of the said Planning Ordinance, which came into force on the 1st February 1960, and that since February 1960, it is an offence for the Respondents to grant a lease for a term exceeding seven years without proper subdivision under the said Planning Ordinance.

(5) That it was never in the contemplation of the Appellant and the Respondents, the parties to the 1957 Lease, that subdivision should be applied for in respect of the demised premises, and that requiring the Respondents to apply for a subdivision of the demised premises would be a fundamental change to the conditions thereof.

(6) That by reason of the foregoing the said Clause 3(c) of the 1957 Lease is unenforceable against the Respondents and that therefore they are released from their obligations thereunder.

The Respondents, having, through their solicitors by Notice to Quit date August 3, 1977, given the Appellant notice to quit and vacate the demised premises by the August 31, 1977, commenced an action in the District Court on the September 29, 1977 in D.C. Summons No. 4724 of 1977 against the Appellant claiming possession of the demised premises and arrears of rent at $240.00 per month from the March 11, 1974 and mesne profits from the September 1, 1977 until delivery of possession of the demised premises. The Appellant in his Defence pleaded (i) that the proportionate increase in the rent of $110.00 per mensem, agreed to between the Respondents and the Appellant, was based on the amount of increase in the assessment of the demised premises and that the proportionate increase to be made on the said rent was $46.50 per month and not $130.00 per month and that the increased rent payable was therefore $156.80 per month and not $240.00 as claimed by the Respondents and (ii) that on the July 13, 1977 the Appellant by letter of that date forwarded a cheque to the Respondents for $9,360.00 and another cheque for $240.00 as requested but under protest and subject to the Appellant's right to recover the same, and (iii) that, in the premises, the Appellant had always been ready and willing to pay the correct rent. The Appellant counterclaimed for specific performances of the 1957 Lease and to have leases granted to him accordingly for two ten year terms, one from August 1, 1967 and the other from the August 1, 1977 in respect of the demised premises.

By a High Court Order dated January 23, 1978 it was ordered that the District Court Summons be transferred to the High Court and that it be consolidated with the Suit No. 2187 of 1977.

The Consolidated Action and Counterclaim came on for hearing and by Judgment dated the August 3, 1982 the learned trial Judge made the

following findings:–

(1) That the 1957 Lease by virtue of Clause 3(c) thereof is a perpetually renewable lease.

(2) That on a true construction of the proviso to Clause 1 of the 1957 Lease the increased rental to be paid by the Appellant to the Respondents should be $240.00 per mensem, based on the increased annual value of the demised premises and not on the increased assessment (property tax) the Respondents had been called upon to pay.

(3) That, on the evidence, the Appellant despite repeated requests, had not paid or even tendered the proper rental payments in accordance with the 1957 Lease since March 1974 and that in consequence thereof the Appellant was in breach of the 1957 Lease and therefore not entitled to renewal of the same.

(4) That the 1957 Lease comes within the provisions of Section 6(1)(a) of the Limitation Act and that the right of action of the Appellant had accrued by the December 22, 1967 if not from the August 1, 1967, and that more than 6 years had passed from the date on which the cause of action accrued.

(5) That it was never in the contemplation of the parties that subdivision should be applied for in respect of the demised premises; that a requirement that the Respondents apply for subdivision of the said premises would be a fundamental change in the conditions of the 1957 Lease; that by virtue of the Planning Ordinance which came into effect on February 1, 1960, clause 3(c) of the 1957 Lease is unenforceable as against the Respondents and thus they are released from their obligations thereunder.

In the result the learned trial Judge dismissed the Appellant's claim in the High Court and gave judgment for the Respondents as prayed for by them in District Court Summons No.4724 of 1977.

The Appellant is now appealing against the whole of the Judgment of the learned trial Judge. During the hearing of the Appeal counsel for the Respondents did not dispute the learned trial Judge's finding, and in our opinion, quite rightly so (see page 382 of *Cheshire's* Modern Law of Real Property (12th Edn.)), that the 1957 Lease was a perpetually renewable lease and conceded that the provisions of the Limitation Act (Cap. 10) could not be pleaded in respect of the renewal of the term August 1, 1977 to July 31, 1987, as proceedings had been commenced by the Appellant in respect of this term well within the six year period.

The heart of the appeal, in our view, revolves around the question of what is the proper construction to be placed on the proviso to Clause 1 of the 1957 Lease, to wit, "Provided however that if the *assessment* (emphasis ours) of the said premises shall at any time within the said period be increased or decreased then and in such event the rent shall also be proportionately increased or decreased accordingly". In this connection one should keep in mind that under Clause 3(b) of the 1957 Lease one of the Landlords' (Respondents') covenants if "to pay all rates taxes *assessments* (emphasis ours) and outgoings payable by law in respect of the demised premises, other than those referred to in Clause 2(c) above", (i.e. Charges for water, light and gas). In determining the meaning of the word "assessment" in Clause 3(b) of the 1957 Lease it is pertinent to note that under Clause 3(b) of the 1953 Lease there is the same Landlord's (Respondent's) covenant couched in exactly the same words.

In 1953 as previously mentioned assessments on the demised property were raised every half-year under section 59 of the Municipal Ordinance by the Municipal Commissioners and under Section 61 of the said Ordinance

"The Commissioners shall cause an assessment list of all houses, buildings, lands and tenements liable to assessment to be prepared containing –

(a) the name of the street or division in which the property is situated;

(b) the designation of the property either by name or by number, sufficient for identification;

(c) the names of the owner and occupier, if known;

(d) the *annual value* (underlining ours) on which the property is *assessed* (underlining ours);

(e) The amount of the *assessment* (emphasis ours) thereon".

It is quite clear from a reading of the said two Sections (1) that it was for the Commissioners to fix both the annual value (defined in Section 3) of the property on which the said property is assessed and the amount of the assessment thereon to be paid by the owner and (2) that "annual value" and "assessment" do not mean one and the same thing and cannot be used interchangeably.

Had these matters been brought to the attention of the learned trial Judge we are of the view that he would not have come to the conclusion

that "the rental should be increased based on the annual value" but would have come to the conclusion that the rental should be increased based on the increased property tax to be paid by the Respondents.

Further, we are of the view that the proviso, to all intents and purposes, is in the nature of an indemnity clause. Under the 1957 Lease the rental to be paid by the Appellant for the fixed term of ten years is a fixed one of $110/- per mensem; the obligation to pay the assessment on the demised premises is on the Respondents. The assessment payable on a house or tenement in Singapore then depended on two factors – one on the question of "the gross amount at which the same can reasonably be expected to let from year to year" and the other on the amount of rates it would attract under Section 51(1) of the Municipal Ordinance for rating purposes, that is to say, whether the house or tenement attracted the maximum Consolidated Rate of thirty per centum on the annual value of the property rated and the maximum of five per centum Improvement Rate on the annual value of the same. There was then the possibility of the assessment payable by the Respondents going up either on the basis of an increased annual value of the property rated or an increase in the Consolidated Rate or Improvement Rate or both; so the proviso relating to an increase of assessment was introduced by the parties into the 1957 Lease to reimburse the Respondents for any increased assessment they might thereby have been called upon to pay. Similarly with regard to a decrease in the assessment so that in this unlikely event the Appellant would get the benefit of such a reduction.

The Appellant was always ready and willing to pay and did in fact pay the proper increased rental of $156.80 per mensum. At one stage he paid the increased rental as demanded by the Respondents, albeit made under protest and subject to determination by the court as to what the proper rent was. In these circumstances we must hold that the Appellant was never ever in breach of the 1957 Lease. It follows from this that the Respondents' claim for possession of the demised premises and arrears of rent and mesne profits must fail and be dismissed with costs here and below.

One of the defences raised by the Respondents at the trial of the High Court suit was that Clause 3(c) of the 1957 Lease could not be performed for the reason that since February 1, 1960 it was an offence for the Respondents to grant a lease for a term exceeding seven years without proper subdivision under the Planning Ordinance 1959. It seems to us that the argument that was put to the learned trial Judge by counsel for the Respondents, and not controverted in the manner in which, in our view, it should have been by counsel for the Appellant, was that it was only since February 1, 1960 that no person could subdivide any land unless he had obtained the permission of the Competent Authority (Section 9(3)) and that any person who contravened this provision was guilty of an offence and liable on conviction to a fine (Section 9(8)). But was this really so? Did the Planning Ordinance enact something new regarding the division of land into lots or parcels for the first time?

Before February 1960 by virtue of the Singapore Improvement Ordinance "a person is said to *'lay-out'* land if by any deed or instrument he conveys, assigns, demises or otherwise disposes of any part of such land in such manner that the part so disposed of becomes a separate holding" and *"holding"* means any piece or parcel of land held or possessed under an instrument of title capable of being registered under the Registration of Deeds Ordinance"; but as from February 1, 1960 "a person is said to *subdivide* land, if, by any deed or instrument, he conveys, assigns, demises or otherwise disposes of any part of such land in such manner that the part so disposed of becomes capable of being registered under the Registration of Deeds Ordinance". In effect *to "lay-out" land* under the Singapore Improvement Ordinance became *to "subdivide" land* under the Planning Ordinance. It was merely a change in nomenclature. Further under Section 59(11) of the Singapore Improvement Ordinance any person who lays out land without the approval of the Board is liable to a fine not exceeding two hundred and fifty dollars; similarly under Section 9(8) of the Planning Ordinance any person who shall subdivide land without permission of the Competent Authority shall be liable to a fine not exceeding one thousand dollars. Under the Singapore Improvement Ordinance it was an offence to grant a lease for a term exceeding 3 years without a proper lay-out: under the Planning Ordinance it is an offence to grant a lease for a term exceeding seven years without a proper subdivision. Yet it was possible under Rule 13 of the Registration of Deeds Rules 1934 for the Registrar of Deeds, exercising his discretion, to have such deeds registered as indeed was what happened both to the 1953 Lease

and the 1957 Lease. If the learned trial Judge's attention had been drawn to the similar sections in the Singapore Improvement Ordinance we are of the view that he would not have found:—

"that it was never in the contemplation of the parties that subdivision should be applied for in respect of the said premises. The Plaintiff (Appellant) says that the Defendants (Respondent) are required to apply for subdivision of the said premises. That would be a fundamental change in the conditions of the said lease. I am of the view that by virtue of the Planning Ordinance, Clause 3(c) is unenforceable as against the Defendants (Respondents) and that they are released from their obligations thereunder."

The 1953 Lease for 4 years and the 1957 Lease for 10 years were executed while the Singapore Improvement Ordinance was in force and yet it was possible to have the 2 deeds registered on the August 4, 1953 and the August 1, 1957 respectively under the Registration of Deeds Rules. The position in 1967 with regard to the registration of a lease for ten years was in effect no more different than it was when the 1957 Lease was registered on the August 1, 1957. The Respondents took no steps whatsoever in 1967 with the Competent Authority and/or the Registrar of Deeds with a view to register a further lease for 10 years. It lies ill in the mouth of the Respondents now to raise this defence when no such fears of criminal illegality assailed them when the Appellant gave written notice to them in 1967 under the 1957 Lease asking for an extension of ten years from August 1, 1967.

In any event this plea taken by the Respondents on the subdivision issue becomes meaningless as the Court in the course of the hearing of this appeal was informed that the property in question has now in fact been subdivided and allowed registration.

The Appellant's claim against the Respondents in the High Court Suit (Writ issued on July 27, 1977) was for specific performance of two leases in respect of the demised premises, one for the term August 1, 1967 to July 31, 1977 and the other for the succeeding term August 1, 1977 to July 31, 1987. The Respondents in their Defence had pleaded that the Appellant's cause of action therein was barred by Section 6(i)(a) of the Limitation Act (Chaper 10). Whatever the merits of the Respondents' plea in this respect it is clear that the Courts will not grant specific performance of an agreement to grant a lease for a term which expired a few days after the issue of the Writ herein. This then leaves the Appellant's claim for specific performance for the second term namely the August 1, 1977 to July 31, 1987 to be adjudicated upon. However, as previously stated, counsel for the Respondents has, in our view quite properly, conceded that he cannot plead the Limitation Act in respect of the said second term.

"A contract for a lease is a contract to which the equitable remedy of specific performance is peculiarly appropriate. If a party can prove to the satisfaction of the court that such a contract has been entered into (which in the instant case the Appellant has done), he can bring a suit for specific performance requiring the other party (in the instant case the Respondents) to execute a deed in the manner required by statute (in the instant case the Registration of Deeds Act) so as to execute that legal term which the parties (in the instant case the Appellant and the Respondents) intended to create. One effect therefore of such a specifically performable contract is that the prospective tenant (in the instant case the Appellant is more than a prospective tenant: he is a tenant in actual physical occupation of the premises) immediately acquires an equitable interest in the land (in the instant case No. 322-F Changi Road) in the sense that he has an equitable right to a legal estate"

(See *Cheshire's* Modern Law of Real Property (122th Edition) at page 392-3). This being so and the equities in the instant case being with the Appellant, it seems to us that the Appellant's appeal must be allowed with costs here and below for the following reasons:—

(1) There is no dispute between the parties to the appeal that in the instant case there is a perpetually renewable lease by virtue of Clause 3(c) of the 1957 Lease.

(2) That the Appellant had made written requests in conformity which Clause 3(c) of the 1957 Lease for renewal of the lease for two successive periods of ten years each.

(3) That the Appellant at the time of the said written requests in respect of the two terms was not in breach of the 1957 Lease;

(4) That the Appellant from the date of the 1957 Lease had always had an equitable right to have granted to him a written lease for successive terms of fixed ten years each and occupied the same position, vis-a-vis, the Respondents, as regards both rights and liabilities, as he would have occupied had a formal lease under seal been executed – See *Walsh* v. *Lonsdale*[1]

(5) That at the time the 1957 Lease was entered into, namely the July 23, 1957, similar provisions as in the Planning Ordinance 1959 relating to "subdivision" were present in the Singapore Improvement Ordinance under the nomenclature of

"lay-out". It seems to us therefore that the question of lay-out, as it then was, and which now equates to subdivision in the Planning Ordinance or Act, as the case may be, in respect of the demised premises must have been in the contemplation of the parties herein and that, therefore the question of a fundamental change in the conditions of the 1957 Lease does not arise;

(6) That the Respondents cannot avail themselves of the provisions of Section 6(i)(a) of the Limitation Act to resist the claims of the Appellant for specific performance in respect of a lease for the demised premises for the term August 1, 1977 to July 31, 1987 for the reason that the Appellant always had an equitable right to a renewal of the lease and equity looks upon as done what ought to have been done.

There will therefore be an order for the specific performance of the agreement for a lease arising under the 1957 Lease; the Respondents are to execute a sealed lease in favour of the Appellant in respect of 322-F Changi Road for a term of 10 years from August 1, 1977 to the July 31, 1987 on the same terms and conditions as in the 1957 Lease. Liberty to Apply.

Order accordingly.

Solicitors: *L.A.J. Smith; Wee Swee Teow & Co.*

MENG LEONG DEVELOPMENT PTE. LTD. v. JIP HONG TRADING CO. PTE. LTD.

[C.A. (Kulasekaram, Lai Kew Chai & Chua JJ.) April 22, 1983]

[Singapore – Civil Appeal No. 81 of 1981]

Land Law – Option to purchase property given to, and exercised by respondents – Repudiation by vendor/appellant – Caveat lodged by respondents – Vendor sought to sell property to third party – Claim for specific performance by respondents.

Contract – Option to purchase exercise by respondents – Repudiation by vendor – Specific performance against vendor.

The appellants, property developers, granted in option in writing to the respondents to buy the property at No. 27A Jalan Chengkek, Singapore in March 1979. The respondents duly exercised the option on April 23, 1979. In May 1979, the appellants purported to repudiate the agreement. The respondents then lodged a caveat against the property on July 4, 1979. In the face of the said caveat, the appellants purported to sell the property to a third party who had notice of the respondents' caveat. The trial court awarded $297,000 as damages against the appellants. The appellants appealed and the respondents cross-appealed.

Held, dismissing the appeal and allowing the cross-appeal: an order for specific performance was the most appropriate remedy. All the equities were in favour of the respondents. To have ordered damages would amount to taking away the proprietary rights of the respondents in favour of the third party whose rights must be subordinated to the superior claims of the respondents.

COURT OF APPEAL.

L.A.J. Smith for the appellants.

Y.R. Jumabhoy (*R. Ramason* with him) for the respondents.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): At the adjourned hearing of this Appeal, we dismissed the appellants' appeal on quantum and allowed the cross-appeal of the respondents. We set aside the award of $297,000 ordered by the High Court as damages payable by the appellants and we ordered instead specific performance of an agreement under which the appellants had on April 23, 1979 agreed to sell No. 27A Jalan Chengkek, Singapore (hereinafter referred to as "the property") for a consideration of $152,500. We now give our reasons.

The appellants were property developers. In late March 1979 they granted an option in writing to the respondents to buy the property. On April 23, 1979 the respondents duly exercised the option. But in the second half of May 1979 the appellants purported to repudiate the agreement on grounds which were canvassed before the High Court but which no longer need concern us save to note that they were without merits at all.

On July 4, 1979 the respondents lodged a caveat bearing No. CV 27207 under the provisions of the Land Titles Act against the property to protect their interests as purchasers. Now, it is well known that the effect of the caveat under the Torrens System is to preserve the priority and protect the interests *in rem* of the caveator against any interest subsequently appearing on the Land Register by way of a caveat. So long as a caveat remains effective, the Registrar of Titles is prohibited from registering any "instrument" (as defined in the Act) which is inconsistent with the caveat: section 103(5).

In the face of the caveat, the appellants on